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अदाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 28th November, 1995:—

BILL NO. 74 OF 1995

A Bill to provide for regulations of depositories in securities and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Depositories Act, 1995.
- (2) It extends to the whole of India.
- (3) It shall be deemed to have come into force on the 20th day of September, 1995.

Short title,
extent and
commencement.

2. (1) In this Act, unless the context otherwise requires,—

(a) “beneficial owner” means a person whose name is recorded as such with a depository;

Definitions.

(b) “Board” means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(c) "bye-laws" means bye-laws made by a depository under section 26;

(d) "Company Law Board" means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956;

1 of 1956

(e) "depository" means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;

1 of 1956.

15 of 1992.

~~6~~"issuer" means any person making an issue of securities;

(f) "participant" means a person registered as such under sub-section (7A) of section 12 of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(h) "prescribed" means prescribed by rules made under this Act;

(i) "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;

(j) "registered owner" means a depository whose name is entered as such in the register of the issuer;

(k) "regulations" means regulations made by the Board;

(l) "security" means such security as may be specified by the Board;

(m) "service" means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.

(2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 or the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, shall have the meanings respectively assigned to them in those Acts.

1 of 1956.

42 of 1956.

15 of 1992.

CHAPTER II

CERTIFICATE OF COMMENCEMENT OF BUSINESS

certificate of
commence-
ment
of business
by de-
positories

3. (1) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.

(2) A certificate granted under sub-section (1) shall be in such form as may be specified by the regulations.

(3) The Board shall not grant a certificate under sub-section (1) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions:

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.

CHAPTER III

RIGHTS AND OBLIGATIONS OF DEPOSITORIES, PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS

4. (1) A depository shall enter into an agreement with one or more participants as its agent.

(2) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

5. Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

6. (1) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

(2) The issuer, on receipt of certificate of security under sub-section (1), shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

(3) A depository shall, on receipt of information under sub-section (2), enter the name of the person referred in sub-section (1) in its records, as the beneficial owner.

7. (1) Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee.

(2) If a beneficial owner or a transferee of any security seeks to have custody of such security the depository shall inform the issuer accordingly.

8. (1) Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

(2) Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

9. (1) All securities held by a depository shall be dematerialised and shall be in a fungible form.

(2) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 shall apply to the securities held by a depository on behalf of the beneficial owners.

10. (1) Notwithstanding anything contained in any other law for the time being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

Agreement
between
depository
and
participant.
Service
of depository

surrender
of certifi-
cate of
security

Registra-
tion of
transfer of
securities
with de-
pository.

Options
to receive
security
certificate
or hold
securities
with de-
pository.

Securities
in deposi-
tories to
be in
fungible
form.

Rights of
deposi-
tories
and
beneficial
owner.

(2) Save as otherwise provided in sub-section (1), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

(3) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

Register
of bene-
ficial
owner.

11. Every depository shall maintain a register and an index of beneficial owners in the manner provided in section 150, section 151 and section 152 of the Companies Act, 1956.

1 of 1956.

Pledge
or hypo-
thecation
of secu-
rities
held in
a depo-
sitory.

12. (1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.

(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

Furnish-
ing
of infor-
mation
and
records by
depository
and issuer.

13. (1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

Option to
opt out in
respect of
any
security.

14. (1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee, as the case may be.

Act 18 of
1891 to
apply to
deposito-
ries.

15. The Bankers' Books Evidence Act, 1891 shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act.

Deposito-
ries to
indemnify
loss in
certain
cases.

1F. (1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

(2) Where the loss due to the negligence of the participants under sub-section (1) is indemnified by the depository shall have the right to recover the same from such participant.

17. (1) Subject to the provisions of this Act, the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

Right's
and
obligations
of depo-
sitories,
etc.

CHAPTER IV

ENQUIRY AND INSPECTION

18. (1) The Board on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may, by order in writing,—

(a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or

(b) authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

(2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.

19. Save as provided in this Act, if after making or causing to be made an enquiry or inspection, the Board is satisfied that it is necessary—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market,

it may issue such directions—

(a) to any depository or participant or any person associated with the securities market; or

(b) to any issuer,

as may be appropriate in the interest of investors or the securities market.

Power
of Board
to call
for infor-
mation
and en-
quiry.

Power of
Board
to give
direction
in certain
cases.

CHAPTER V

PENALTY

20. Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or any regulations or bye-laws made thereunder shall be punishable with imprisonment for a term which may extend to five years or with fine, or with both.

Offences.

21. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the

Offences
by com-
panies.

business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER VI

MISCELLANEOUS

Cognizance
of offences
by courts.

22. (1) No court shall take cognizance of any offence punishable under this Act or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Appeals.

23. (1) Any person aggrieved by an order of the Board made under this Act, or the regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

24. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which an appeal may be preferred under sub-section (1) of section 23;

(b) the form in which an appeal may be preferred under sub-section (3) of section 23 and the fees payable in respect of such appeal;

(c) the procedure for disposing of an appeal under sub-section (4) of section 23.

25. (1) Without prejudice to the provisions of section 30 of the Securities and Exchange Board of India Act, 1992, the Board may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) any other form in which record is to be maintained under clause (i) of sub-section (1) of section 2;

(b) the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3;

(c) the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;

(d) the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;

(e) the conditions and the fee payable with respect to the issue of certificate of securities under sub-section (3) of the section 14;

(f) the rights and obligations of the depositories, participants and the issuers under sub-section (1) of section 17;

(g) the eligibility criteria for admission of securities into the depository under sub-section (2) of section 17.

26. (1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Act and the regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for—

(a) the eligibility criteria for admission and removal of securities in the depository;

Power of
Central
Govern-
ment to
make
rules.

Power of
Board to
make
regula-
tions.

Power of
deposito-
ries to
make
bye-
laws.

(b) the conditions subject to which the securities shall be dealt with;

(c) the eligibility criteria for admission of any person as a participant;

(d) the manner and procedure for dematerialisation of securities;

(e) the procedure for transactions within the depository;

(f) the manner in which securities shall be dealt with or withdrawn from a depository;

(g) the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

(h) the conditions of admission into and withdrawal from a participant by a beneficial owner;

(i) the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;

(j) the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;

(k) the manner of creating pledge or hypothecation in respect of securities held with a depository;

(l) *inter se* rights and obligations among the depository, issuer, participants and beneficial owners;

(m) the manner and the periodicity of furnishing information to the Board, issuer and other persons;

(n) the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;

(o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

(p) the internal control standards including procedure for auditing, reviewing and monitoring.

(3) Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

(4) If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

27. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and regulations to be laid before Parliament.

28. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

Application of other laws not barred.

29. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Removal of difficulties.

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

30. The enactments specified in the Schedule to this Act shall be amended in the manner provided therein.

Amendments to certain enactments.

Ord.
11 of 1995.

31. (1) The Depositories Ordinance, 1995 is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provision of this Act.

THE SCHEDULE

(See section 30)

AMENDMENTS TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 OF 1899)

AMENDMENT

After section 3, the following section shall be inserted, namely:—

Securities
not lia-
ble to
stamp
duty.

'8A. Notwithstanding anything contained in this Act,—

(a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;

(b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories Act, 1995, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;

(c) transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;

(d) transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under article 62 of Schedule I of this Act.

Explanation.—For the purposes of this section, the expressions "beneficial owner", "depository", "issuer" and "record" shall have the meanings respectively assigned to them in clauses (a), (e), (f) and (i) of sub-section (1) of section 2 of the Depositories Act, 1995.'

PART II

AMENDMENTS TO THE COMPANIES ACT, 1956

(1 OF 1956)

AMENDMENTS

1. In section 2, after clause (45A), the following clause shall be inserted, namely:—

'(45B) "Securities and Exchange Board of India" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992.'

2. After section 2, the following section shall be inserted, namely:—

“2A. Words and expressions used and not defined in this Act but defined in the Depositories Act, 1995 shall have the same meaning respectively assigned to them in that Act.”.

3. In section 41, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.”.

4. In section 49, in sub-section (5), after clause (b), the following clause shall be inserted, namely:—

“(c) from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner.”.

5. In section 51, the following proviso shall be inserted, namely:—

“Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.”.

6. Section 83 shall be omitted.

7. In section 108, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.”.

8. In section 111, after sub-section (13), the following sub-section shall be inserted, namely:—

“(14) In this section “company” means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.”.

9. After section 111, the following section shall be inserted, namely:—

“111A. (1) In this section, unless the context otherwise requires, “company” means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may on an application made by a depository, company participant or investor or the Securities and Exchange Board of India within two months from the date of transfer

Rectification of register on transfer.

15 of 1992.

1 of 1986.

of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company, as the case may be, after such enquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985.

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.

10. In section 113, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.”

11. In section 150, in sub-section (1), in clause (b), the words “distinguishing each share by its number” shall be omitted.

12. In section 152, in sub-section (1), in clause (b), the words “distinguishing each debenture by its number” shall be omitted.

13. After section 152, the following section, shall be inserted, namely:—

“152A. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1995, shall be deemed to be an index of members and register and index of debenture holders, as the case may be, for the purposes of this Act.”

14. In Schedule II, in Part II, in clause C, after sub-section 9, the following sub-clause shall be inserted, namely:—

“9A. The details of option to subscribe for securities to be dealt with in a depository.”

Register
and index
of bene-
ficial
owner to
be of
debenture
holder.

PART III

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 (42 OF 1956)

AMENDMENTS

1. In section 2, for clause (i), the following clause shall be substituted, namely:—

- '(i) "spot delivery contract" means a contract which provides for—
 - (a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
 - (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.'.

2. Section 22A shall be omitted.

PART IV

AMENDMENT TO THE INCOME-TAX ACT, 1961 (43 OF 1961)

AMENDMENT

In section 45, after sub-section (2), the following sub-section shall be inserted, namely:—

'(2A) Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories Act, 1995, and for the purposes of—

- (i) section 48; and
- (ii) proviso to clause (42 A) of section 2.

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

Explanation—For the purposes of this sub-section, the expressions "beneficial owner", "depository" and "security" shall have the meanings respectively assigned to them in clauses (a), (e) and (l) of sub-section (1) of section 2 of the Depositories Act, 1995.'

PART V

AMENDMENT TO THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

(45 OF 1988)

AMENDMENT

In section 3, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) the securities held by a—

(i) depository as a registered owner under sub-section (1) of section 10 of the Depositories Act, 1995;

(ii) participant as an agent of a depository.

Explanation.—The expressions “depository” and “participant” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1995.’

PART VI

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

AMENDMENTS

1. In section 2, in sub-section (2), for the words, brackets and figures “the Securities Contracts (Regulation) Act, 1956”, the words, brackets and figures “the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1995” shall be substituted.

4th of 1956.

2. In section 11, in clause (ba), for the words ‘depositaries, custodians’, the words “depositaries, participants, custodians” shall be substituted.

3. In section 12, in sub-section (1A), for the words “depository, custodian”, at both the places where they occur, the words “depository, participant, custodian” shall be substituted.

4. In section 16, in sub-section (1), for the words “this Act”, the words “this Act or the Depositories Act, 1995” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Paper based ownership and transfer of securities has been a major draw-back of the Indian securities market as this often results in delay in settlement and transfer of securities, lead to 'bad delivery', theft, forgery, etc. As a result the investor is deprived of liquidity in security and investor grievance redressal become intractable. To pave the way for smooth and free transfer of securities it has become essential to make a law for depositories.

2. The depositories legislation, *inter alia*, provides for:—

- (a) a legal basis for establishment depositories to conduct the task of maintenance of ownership records of securities and effect changes in ownership records through book entry;
- (b) dematerialise securities in the depositories mode as well as giving option to an investor to choose between holding securities as at present or hold the securities in a dematerialised from a depository;
- (c) making the securities fungible;
- (d) making the shares, debentures and any interest thereon of a public limited company freely transferrable;
- (e) exempting all transfers of shares within a depository from stamp duty.

3. As Parliament was not in session, President promulgated the Depositories Ordinance on 20th September, 1995 for the said purpose.

4. The Bill seeks to replace the said Ordinance.

NEW DELHI;

The 10th November, 1995.

MANMOHAN SINGH.

Notes on Clauses

Clause 2 defines the various expressions occurring in the Bill.

Clause 3 provides for obtaining a certificate of commencement of business by a depository from the Board and such certificate shall be in such form as may be specified by the regulations. The Board shall not grant a certificate unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions.

Clause 4 seeks to provide that every depository shall enter into an agreement with one or more participants as its agents and such agreement shall be in such form as may be specified by the bye-laws.

Clause 5 provides that any person may enter into an agreement with any depository for availing its services and such agreement shall be in such form as may as specified by the bye-laws.

Clause 6 provides that any person who seeks to avail the services of a depository shall surrender the certificate of security to the issuer in such manner as may be specified by the regulations. The issuer on receipt of such certificate of security shall cancel certificate of security and substitute in its records the name of the depository as registered owner in respect of that security. The depository shall enter the name of such person who has surrendered the certificate of security in its records as the beneficial owner.

Clause 7 provides for registration of transfer of securities in the name of the transferee with a depository. This clause further provides that the depository shall inform the issuer if a beneficial owner or a transferee of any security seeks to have the custody of such security.

Clause 8 provides for options either to receive security certificate or hold securities with depository.

Clause 9 provides for securities held by a depository to be dematerialised and to be in fungible form.

Clause 10 provides for the rights of the depository and beneficial owners.

Clause 11 seeks to provide for maintenance of a register and an index of beneficial owner in the manner provided in sections 150, 151 and 152 of the Companies Act, 1956.

Clause 12 provides for pledge or hypothecation of securities by a beneficial owner. Such beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly and such entries in the records of depository shall be evidence of a pledge or hypothecation.

Clause 13 provides for furnishing information about the transfer of securities in the name of beneficial owner and records by a depository and issuer.

Clause 14 provides for options of the beneficial owner to opt out in respect of any security on fulfilment of certain conditions and payment of such fees as specified by the regulations.

Clause 15 provides that the Bankers Books Evidence Act, 1891 to apply to a depository as if it were a bank in section 2 of that Act.

Clause 16 provides for indemnifying the loss caused to the beneficial owner due to the negligence of the depository or the participants. This clause further provides that where the loss indemnified by the depository is due to the negligence of the participants, such depository shall have the right to recover the same from such participants.

Clause 17 states that rights and obligations of the depositories, participants and issuer whose securities are dealt with by a depository and eligibility criteria for admission of securities into the depository shall be specified by the regulations.

Clause 18 deals with the power of the Board to call for information from issuer, depository, participant or beneficial owner or authorities any person to make any enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository, or participant.

Clause 19 confers the power on the Board to give direction in certain cases after causing enquiry or inspection.

Clause 20 deals with offences in contravention of the provisions of this Bill.

Clause 21 deals with the offences committed by companies in contravention of the provisions of this Bill.

Clause 22 seeks to provide that no court shall take cognizance of offences punishable under the Bill or any regulations or bye-laws except on a complaint made by the Board. This clause further provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under the Bill.

Clause 23 deals with the provisions relating to appeals by a person aggrieved by an order of the Board made under this Bill.

Clause 24 empowers the Central Government to make rules for carrying out the provisions of the Bill in particular relating to (a) the time within which an appeal may be preferred under sub-clause (1) of clause 23; (b) the form in which an appeal may be preferred under sub-section (3) of clause 23 and the fees payable in respect of such appeal; and (c) the procedure for disposing of an appeal under sub-clause (4) of clause 23.

Clause 25 empowers the Board to make regulations with regard to various matters specified therein.

Clause 26 lays down the powers of depositories to make bye-laws with the previous approval of the Board.

Clause 27 lays down that the rules and regulations made under the Bill would be laid before the Parliament.

Clause 28 provides that the provisions of the Bill shall be in addition to, and not in derogation to the provisions of any other law for the time being in force relating to the holding and transfer of securities.

Clause 29 seeks to empower the Central Government to remove any difficulty which may arise in giving effect to the provisions of the Bill.

Clause 30 provides for amendment to certain provisions of the Indian stamp Act, 1899, the Companies Act, 1956, the Securities Contract (Regulation) Act, 1956, the Income-tax Act, 1961, the *BBenami* Transactions (Prohibition) Act, 1988 and the Securities and Exchange Board of India Act, 1992 provided in the Schedule to the Bill.

Clause 31 of the Bill seeks to repeal the Depositories Ordinance, 1995 and save actions taken thereunder as if taken under the corresponding provisions of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 24 of the Bill seeks to empower Central Government to make rules for the time within which an appeal may be preferred from the order of SEBI, the form in which an appeal may be preferred, and the fees payable in respect of such appeal and the procedure for disposing of an appeal.

2. Clause 25 of the Bill seeks to empower SEBI to make regulations for the form in which record is to be maintained by the depository, the form in which certificate of commencement of business shall be issued by SEBI, the manner in which the certificate of security shall be surrendered by an investor, the manner of creating a pledge or hypothecation in respect of a security owned by a beneficial owner, the conditions and fee payable with respect to issue of certificate of securities while coming out of depositories, the rights and obligations of depositories, participants and the issuers, and the eligibility criteria for admission of securities into depository.

3. The matters in respect of which rules and regulations may be made are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

4. The delegation of legislative power is, therefore, of a normal character.

R. C. BHARDWAJ

Secretary-General.

